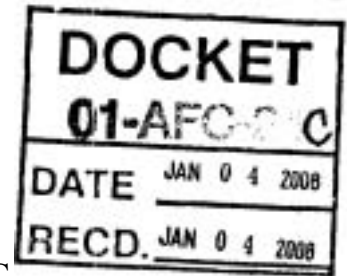


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 01-AFC-24C
)
 PALOMAR ENERGY CENTER) STAFF RESPONSE
) AND RECOMMENDATIONS
) TO RODRIGUEZ COMPLAINT
 _____) RE: VIS-4

SUMMARY

On December 7, 2007, Mark Rodriguez, a resident of the City of Escondido, filed a document entitled "Non-Compliance Complaint and Public Records Act Request – Palomar Energy Center." This document concerning Condition of Certification VIS-4 for the Palomar Energy Center (PEC) fails to comply with the informational requirements for post-certification complaints under the Energy Commission's regulations and is therefore insufficient. (See, California Code of Regulations, Title 20, § 1237(a).) Nevertheless, staff initiated an investigation into the underlying allegations raised in the document, and has concluded that PEC is in compliance with this Condition. Staff recommends that the "complaint" concerning Condition of Certification VIS-4 be dismissed as being insufficient, as well as lacking merit.

I.**BACKGROUND**

Palomar Energy, LLC, a subsidiary of Sempra Energy Resources, filed an Application for Certification (AFC) on November 28, 2001, with the California Energy Commission seeking approval to construct and operate the PEC project. The project was subsequently licensed by the Energy Commission on August 6, 2003. The project was approved for a natural gas-fired combined cycle power plant with two 220 MVA combustion turbine generators equipped with dry low combustors and evaporative inlet air coolers, two heat recovery steam generators equipped with duct burners, a 250 MVA steam turbine-generator and associated auxiliary systems and equipment. The electrical power net output from the plant was approved for 521 MW during summer conditions and a maximum 545 MW during winter conditions. The commercial operation of the plant commenced on April 1, 2006. The ownership of the plant was subsequently transferred to SDG&E (CEC 2003a.)

On October 8, 2007, Mark Rodriguez, a resident of the City of Escondido, filed a Public Records Act request with the Commission. Staff responded to his request in a timely manner, and provided Mr. Rodriguez with all public records he requested regarding

PEC. On December 7, 2007, Mr. Rodriguez filed a document concerning Condition of Certification VIS-4 for PEC entitled "Non-Compliance Complaint and Public Records Act Request – Palomar Energy Center". Staff has completed its investigation and analysis of the concerns raised by Mr. Rodriguez in this document.

II.

INVESTIGATION AND ANALYSIS

The complaint filed by Mr. Rodriguez regarding allegations of non-compliance with Condition of Certification VIS-4 was analyzed by staff for both sufficiency and on the merits of its claims. Staff concludes that the complaint is insufficient, in that it fails to meet the informational requirements of Title 20, California Code of Regulations, Section 1237(a). Further, based on its investigation into the substance of the allegations, staff concludes that the Complaint, even if found to be complete, would nevertheless be without merit.

A. Sufficiency of the Complaint

Title 20, California Code of Regulations, section 1237(a), provides in relevant part:

Any person must file any complaint alleging noncompliance with a commission decision...solely in accordance with this section. All such complaints...shall include the following information:.. .

(3) a statement of facts upon which the complaint is based;.. .

(5) the action the complainant desires the commission to take;.. .

(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.

In his complaint, Mr. Rodriguez expresses his opinion that the Palomar Energy Center is not in compliance with VIS-4. However, he has failed to provide any evidence in support of that opinion. His unsupported assertions are contrary to all data that have been previously collected by staff, all observations previously made by staff, and all conclusions reached by staff. Lacking a coherent statement of facts upon which to base his complaint, his document does not comply with Section 1237(a)(3).

Likewise, the complaint fails to set forth the specific action that the complainant desires the commission to take, as required pursuant to section 1237(a)(5). Rather, ~~the~~ complainant merely expresses his opinions regarding his perceived failures of the project owner and Compliance Project Manager to complete activities that have either already been satisfied under Condition of Certification VIS-4, or are beyond the scope of the Conditions of Certification. The complainant states, "The project would also not appear well integrated into the existing landscape and would require specific mitigation

measures”, but fails to state what specific mitigation measures the committee should order.

Section 1237(a)(7) further requires that the complainant provide a declaration signed under penalty of perjury attesting to the truth and accuracy of the statement of facts upon which the complaint is based. Despite numerous requests by staff that he provide such an attestation, the complainant continues to refuse to do so.

Based on the foregoing, staff recommends that the committee determine that the complaint regarding VIS-4 is insufficient pursuant to Section 1237(a), and order that the complaint be dismissed pursuant to Section 1237(e)(1) as set forth below in Section III, “Recommendations.” Staff further recommends that the committee also make a finding regarding the merits of the Complaint as discussed below.

B. Merits of the Complaint

The Complaint regarding VIS-4 suggests that the Palomar Energy Center is not in compliance with this Condition of Certification. The complaint contains assertions regarding the complainant’s perceived failures of the project owner and CPM to complete activities that have either already been satisfied under Condition of Certification VIS-4, or are beyond the scope of the Conditions of Certification. It appears that the complainant believes that additional visual screening is necessary, despite the requirements of the Condition of Certification and the contrary findings of the Commission staff. [Exhibit 1]

Commission staff has determined that PEC is in compliance with Condition of Certification VIS-4. The initial determination was made on August 26, 2005 by the Compliance Project Manager after reviewing the submittals, and also the recommendation of the Visual Resources coordinator.

Condition of Certification VIS-4 for the Palomar Energy Center provides that

“[i]f ETRC construction activities that will provide effective screening of the power plant from nearby residences west of the project site have not begun 180 days prior to initial firing, the project owner shall develop and implement a landscaping screening plan that provides effective screening of project structures. The landscaping screening plan shall include off-site landscaping as necessary to achieve effective screening. The CPM’s determination as to whether landscaping screening is necessary shall be based on ETRC building construction or landscaping installation completed, in progress, and/or in final design and scheduled for construction/installation. If the CPM determines that landscape screening is needed, the landscape screening plan shall include vegetation consisting of informal groupings of fast-growing species, predominantly or exclusively evergreen trees. The vegetation must be strategically placed

and of sufficient density and height to effectively screen the project within five years after initial firing. The project owner shall consider the use of berms as a means to help fulfill this requirement.

The project owner shall submit the landscape screening plan to the CPM for review and approval and to the City of Escondido for review and comment. The plan shall include but not necessarily be limited to:

- a) An 11"x17" color simulation of the proposed landscaping at 5 years as viewed from KOP 3;
- b) A plan view to scale depicting the project and the location of landscape screening;
- c) A detailed list of plants to be used; their size and age at planting; the expected time to maturity, and the expected height at five years and at maturity; and
- d) A table showing when the screening objectives are calculated to be achieved for each of the major project structures, and the height and elevation of the features of the existing setting and the project that are factors in those calculations.

PEC is located in the Escondido Research and Technology Center (ERTC), zoned for industrial use. ERTC was planning and developing adjacent sections of the ERTC when the PEC was approved. In fact, staff entered into an MOU as they simultaneously did the environmental review of the PEC site. If the ERTC could not provide effective screening at least 180 days prior to initial firing, either in its design plans or in-process construction, the Compliance Program Manager would notify the PEC it must submit a detailed landscaping plan for its own site that demonstrated adequate screening.

Commission staff determined the ERTC's in-process development, and the final design plans for future development provided adequate screening, and notified the project owner that additional landscape screening was not necessary. Submittal log # 2005-1079 [Exhibit 2] is the Compliance Program Manager's record documenting compliance with VIS-4. Here, on 8/26/05, technical staff wrote "the photos submitted document that the degree of screening of the power plant that the modified terrain provides is approximately the same as in the visual simulations provided by the applicant during the AFC licensing process." The photos showed ERTC had graded key areas around the PEC, and also because of the natural terrain, the PEC was screened to a degree that met the requirement of VIS-4. The CPM then approved the submittal and wrote "per Walker's comments, further screening is not required."

The CPM also conducted a recent site visit to the ERTC in September 2007. At that time, he noted that additional landscaping has been graded and vegetation planted by

the ERTC developer, providing additional screening. Staff therefore concludes that the PEC initially complied with Condition of Certification VIS-4, and remains in compliance.

Despite staff's conclusions, the complainant asserts that "the data provided clearly indicates that the PEC had failed to meet compliance per its VIS-4 requirements." Staff previously discussed this matter with Mr. Rodriguez prior to his filing this complaint. Staff explained that PEC is indeed in compliance with this condition of Certification, explained *why* PEC remains in compliance with this condition of Certification, and provided Mr. Rodriguez with all relevant documents demonstrating that PEC remains in compliance with this condition of Certification. The complainant simply disagrees with staff's conclusions. Offering no further evidence to support his opinions, however, the Complaint regarding VIS-4 is without merit.

III.

RECOMMENDATIONS

Title 20 California Code of Regulations Section 1237(e) provides in relevant part:

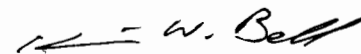
Within 30 days after issuance of the staff report, the committee shall:

- (1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;
- (2) issue a written decision presenting its findings, conclusions, or order(s) after considering the complaint, staff report, and any submitted comments;
or
- (3) conduct hearings to further investigate the matter and then issue a written decision.

As to the document filed on December 7 entitled "Non-Compliance Complaint and Public Records Act Request – Palomar Energy Center" regarding Condition of Certification VIS-4, based on staff's investigation and analysis, staff recommends that the committee make a determination of insufficiency and lack of merit, in accordance with Section 1237(e)(1), and dismiss the complaint on those grounds.

Date: January 4, 2008

Respectfully submitted,



KEVIN W. BELL
Senior Staff Counsel

EXHIBIT 1

Staff Response to VIS-4 Complaint
Palomar Energy Center, 01-AFC-24C
January 4, 2008
Compliance Determination for Condition of Certification (COC) VIS-4

The Palomar Energy Center (PEC) is in compliance with COC VIS-4. The determination was made on August 26, 2005 by the Compliance Project Manager after reviewing the submittals, and was based upon the recommendation of the visual resources staff.

Condition of certification VIS-4 includes two scenarios for compliance. "The CPM's determination as to whether landscape screening is necessary shall be based on ERTC building construction or landscaping installation completed, in progress, and/or in final design and scheduled for construction/installation." PEC is located in the Escondido Research and Technology Center (ERTC), zoned for industrial use. ERTC was planning and developing adjacent sections of the ERTC when the PEC was approved and constructed. If the ERTC could not provide effective screening at least 180 days prior to initial firing, either in its design plans or in-process construction, the CPM would notify the PEC it must submit a detailed landscaping plan for its own site that demonstrated adequate screening.

CEC staff determined the ERTC's in-process development, and the final design plans for future development provided adequate screening, and notified the project owner that further actions regarding VIS-4 was not necessary.

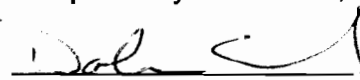
Submittal log # 2005-1079 is the CPM's record documenting compliance with VIS-4 and is attached. On 8/26/05, technical staff wrote "the photos submitted document that the degree of screening of the power plant that the modified terrain provides is approximately the same as in the visual simulations provided by the applicant during the AFC licensing process." The photos showed ERTC had graded key areas around the PEC, and also because of the natural terrain, the PEC was screened to a degree that met the requirement of Condition Of Certification VIS-4. The CPM then approved the submittal and wrote "per Walker's comments, further screening is not required."

In addition, this Compliance Program Manager conducted a recent site visit to the ERTC in September 2007. At that time, I noted that a substantial number of shrubs and trees had been planted by the ERTC developer on the residential-facing portion of the berm which will provide additional screening when mature.

Therefore, staff has concluded that the PEC complied with VIS-4 and remains in compliance. Attached please find for reference the condition of certification as written in the approved Decision.

Date: January 4, 2008

Respectfully submitted,



Dale Edwards
Compliance Program Manager

Landscape Screening

VIS-4 If ERTC (Escondido Research and Technology Center) construction activities that will provide effective screening of the power plant from nearby residences west of the project site have not begun 180 days prior to initial firing, the project owner shall develop and implement a landscape screening plan that provides effective screening of project structures. The landscape screening plan shall include off-site landscaping as necessary to achieve effective screening. The CPM's determination as to whether landscape screening is necessary shall be based on ERTC building construction or landscaping installation completed, in progress, and/or in final design and scheduled for construction/installation. If the CPM determines that landscape screening is needed, the landscape screening plan shall include vegetation consisting of informal groupings of fast-growing species, predominantly or exclusively evergreen trees. The vegetation must be strategically placed and of sufficient density and height to effectively screen the project within five years after first firing. The project owner shall consider the use of berms as a means to help fulfill this requirement. The project owner shall submit the landscape screening plan to the CPM for review and approval and to the City of Escondido for review and comment. The plan shall include but not necessarily be limited to:

- a) An 11"x17" color simulation of the proposed landscaping at 5 years as viewed from KOP 3;
- b) A plan view to scale depicting the project and the location of landscape screening;
- c) A detailed list of plants to be used; their size and age at planting; the expected time to maturity, and the expected height at five years and at maturity; and
- d) A table showing when the screening objectives are calculated to be achieved for each of the major project structures, and the height and elevation of the features of the existing setting and the project that are factors in those calculations.

Verification: At least 180 days prior to initial firing, the project owner shall provide to the CPM documentation of ERTC construction that would provide screening of the power plant from nearby residences to the west of the project. Within 30 days of submittal of the documentation, the CPM will notify the project owner regarding whether landscape screening is needed.

If the CPM notifies the project manager that landscape screening is needed, at least 120 days prior to initial firing the project owner shall submit the landscape screening plan to the CPM for review and approval and to the City of Escondido for review and comment. The project owner shall not implement the plan until the project owner receives approval of the submittal from the CPM.

The project owner shall complete installation of the landscape screening prior to the start of commercial operation. The project owner shall notify the CPM within seven days after completing installation of the landscape screening, that the landscape screening is ready for inspection.

EXHIBIT 2

California Energy Commission

Compliance Unit Tracking & Coordination Sheet

To: Dale Edwards Submittal Log #: 2005-1079
 Project Name: Palomar Power LogDate: 8/26/2005
 Docket #: 2001-AFC-24 Date Assigned: 8/26/2005
 Compliance Program Manager: Connie Bruins Due Date: 9/9/2005
 Subject: VIS-4, COLOR PHOTOS RE VISUAL SCREENING
 Type: C Original Log Number:

Special Instructions:

Staff Approval Needed To Proceed: No Field Trip Required To Verify: No

Conditions of Certification:

Technical Area	Condition #	Event #	Remains In Compliance	Condition Satisfied	Additional Information Required	Not In Compliance	Submittal Not Required
VISUAL	VIS-04	1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The photos submitted document that the degree of screening of the power plant that the modified terrain provides is approximately the same as in the visual simulations provided by the applicant during the AFC licensing process.

Sign, date and return to the Compliance Unit.

8-26-05
Mary Walker
 Technical Reviewer

DE 8/26/05
 Technical Senior

OM

Comments:

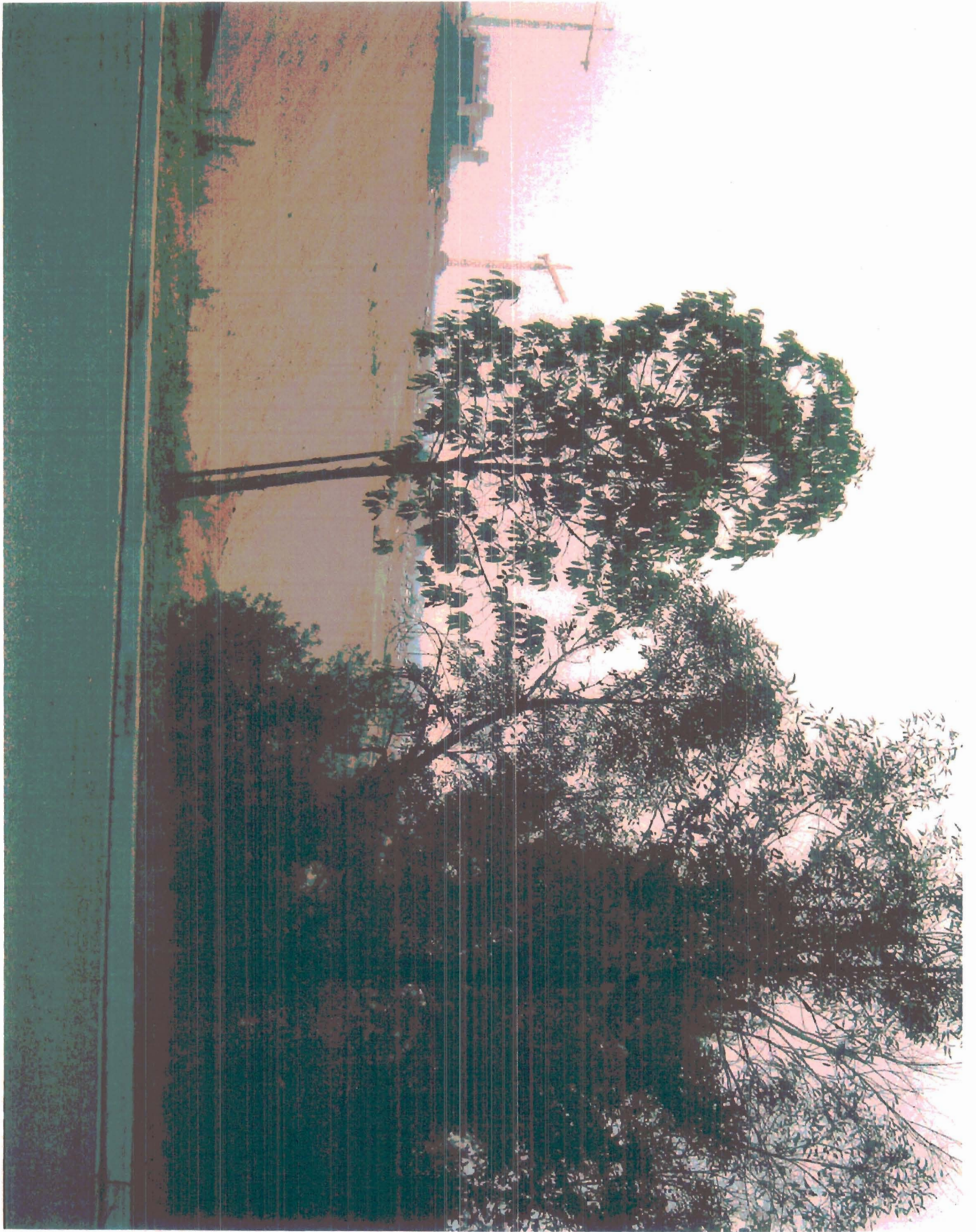
Per reviewer comments, further screening is not required. eb

Compliance Unit Use Only

Returned Date: 8/26/05 CPM: eb Closed Out: 2/1/05 File: VIS

Friday, August 26, 2005

logged out

























BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

IN THE MATTER OF:

DOCKET No. 01-AFC-24C

APPLICATION FOR CERTIFICATION FOR THE
PALOMAR ENERGY PROJECT

PROOF OF SERVICE

I, Janet Preis, declare that on January 4, 2008, I deposited copies of the attached Staff Responses to Complaints VIS-4 in the United States mail at *Sacramento, CA* with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required 12 copies to the address below.

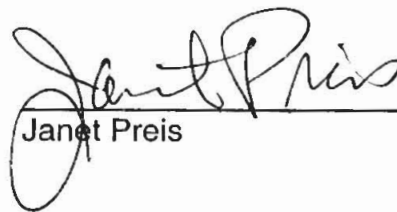
CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No. 01-AFC-24C
1516 Ninth Street
Sacramento, CA 95814-5512
* * * *

Also send copies of all documents to:

Mark Rodriguez
945 Chardonney Way
Escondido, CA 92029
marknrodriguez@cox.net

Taylor O. Miller
Senior Environmental Counsel
Sempra Energy
925 L Street, Suite 650
Sacramento, CA 95814
TMiller@Sempra.com

I declare under penalty of perjury that the foregoing is true and correct



Janet Preis

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FOR YOUR INFORMATION ONLY! Parties **DO NOT** mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

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